IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Inder Kanwar **Vs.** **State of Rajasthan and Ors.**

D.B. SPEICAL APPEAL NO. 364 /1997
Under Article 225 of the Constitution of India against the Judgment dated 3.2.1997 passed by the Hon'ble Mr. Justice P.P. Naolekar in S.B. Civil Writ Petition No.555/973 Inder Kanwar Vs. State of Rajasthan and Ors.

Date of Judgment :: 8.2.2006

PRESENT

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE R.P.VYAS

Mr Vijay Bishnoi, for the appellant
Mr.L.R. Upadhyay, for the respondent/s

BY THE COURT (PER HON'BLE JUSTICE R.BALIA):

Heard the learned counsel for the parties.

This appeal is directed against the order of the learned Single Judge dated 3.2.1997, by which the writ petition filed by the appellant-petitioner has been dismissed.

The brief facts necessary for the present purposes are that in the instant case, the

Ceiling proceedings against Smt. Inder Kanwar under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short 'the Act of 1973') were initiated and dropped by holding that she did not possess any surplus land. Thereafter, resorting to Section 15(1) of the Act of 1973, the Ceiling proceedings in the case of appellant-petitioner were reopened. There was no dispute about holding of the land by Smt. Inder Kanwar Wd/o Shri Mangal Singh that she held 169 Bigha 14 Biswa as on 25.2.1970.

Two fold contentions were raised before the Additional Collector (Ceiling) that the petitioner was entitled to a separate unit for her elder son Govind Singh and the land to the extent Govind Singh is entitled to under ceiling limit should be allowed to be retained as separate unit. The second contention was about recognition of transfer made after 22.5.1970, but before the commencement of the Act of 1973. The transfer in dispute is of 67 Bighas 3 Biswa to Sugan Singh and Manohar Singh on 6.5.1972 for a sum of Rs.5000/-.

The claim for having a separate unit of Govind Singh was not accepted on the basis of

holder's own plea that she is only member of the family and her son is separately living. While accepting certain other transfers, transfer in favour of Sugan Singh and Manohar Singh on 6.5.1972 ad measuring 67 Bigha 3 Biswa, was not recognised on the ground that the consideration of Rs.75/- per bigha worked out have been received by the holders was too low and therefore, the transfer cannot be considered as a bona-fide one.

In the appeal against the aforesaid order of the Additional Collector dated 6.3.1995, the same contentions were raised before the Board of Revenue and were rejected on the same grounds. However, the Board of Revenue was further of the opinion that the Additional Collector has not complied with the provisions of Section 13 of the Act of publishing of final statement of holdings before passing the orders by the Additional Collector and remanded the matter back to the Additional Collector for completing the proceeding as per procedure provided under Section 13 of the Act.

This led to filing of the writ petition before this Court by the holder challenging the

declaration of land ad-measuring 34 Bighas and 14 Biswas as surplus land.

The said writ petition was dismissed vide judgment under appeal. The only contention which is raised before us is about not recognising the transfers made in favour of Sugan Singh and Manohar Singh on the ground that the consideration for which transfers have been made appears to be too low. The learned Single Judge agreed with the conclusion reached by the Additional Collector and Board of Revenue and dismissed the writ petition. Hence, this appeal.

Having perused the orders, it is apparent that on admitted facts, the price has been assumed to be too low without any enquiry as to the question what was the prevalent price of the land in the area where the transferred land was situated as on the date of transfer or in the proximate time. Without holding any enquiry in respect of the prevalent price in the year 1972, the assumption of the inadequacy of the price in the year 1985 cannot be sustained. Without referring to any material and conclusion regarding the prevalent market price of the land in question in the area on or about the date of

transfer, it cannot be said by any comprehension that the price fetched was too low so as to give an inference of lack of bona-fide as is required to be established under Section 6 of the Act of 1973. Undoubtedly, the burden of proving bona-fide was on the holders during the period of 25.2.70 to the commencement of the Act but whether the apparent consideration shown in the transfer was inadequate was for the authority to prima facie satisfy himself on the basis of any material that may be before him by making comparison of the prevalent market price of the area to raise assumption about inadequacy of price. The inadequacy of consideration stated in regard to transfer deed cannot be assumed without any material in comparison. Raising presumption of inadequacy of price in respect of the transaction which has taken almost more than twenty years before the orders were passed, without any material merely on surmises and conjunctures cannot be sustained.

We are, therefore, of the opinion that it is error apparent on the face of record, as the presumption about inadequacy of price has been raised by the competent officer as well as Board of Revenue without any material on record and

without making any efforts to find out whether the price disclosed as consideration for transfer for the protection of land in question was inadequate. This finding could have been arrived at only after laying foundation for satisfying the competent authority about inadequacy of price on some existing material. Having not done so, the orders on its face cannot be sustained as the finding of lack of bona fide is not referable to any material. It may be noticed that while the protection has been provided to the transfer of the agricultural land between 25.7.1970 to the date of commencement of the Act of 1973 as recognisable transfers if transfers are bona-fide and genuine, there is no presumption that such transfer must be presumed to be not bonafide and genuine without any material on the basis of which even subjective opinion can be framed. For framing subjective opinion about lack of bonafide of any transfer, bonafide and genuineness of the transaction has to be considered on the basis of material on record.

The learned Single Judge in our opinion has erred in not considering this aspect of the matter and assuming that Rs.75/- per bigha was grossly inadequate consideration even in the year

1972 without there being any material. Consequently, the order under appeal cannot be sustained.

As a result, this appeal is allowed and the judgment under appeal is set-aside. The writ petition is allowed and order dated 6.3.95 (Annex.13) passed by Additional Collector (Ceiling), Pali; order dated 20.11.95 (Annex.15) and the order dated 19.9.96 (Annex.17) both passed by Board of Revenue are set-aside. Since review petition filed against the appellate order of the Board of Revenue was rejected, said order also cannot survive.

The matter may now be reexamined by the competent officer under Ceiling Law in respect of the bonafide and genuineness of transfer in question by giving an opportunity to the appellant.

No order as to costs.

(R.P.VYAS), J. (RAJESH BALIA),J.

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